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Report of the Special Committee on the Charter of the United Nations and on the Strengthening of the Role of the Organization

Implementation of the provisions of the Charter of the United Nations related to assistance to third States affected by the application of sanctions

Report of the Secretary-General

Summary

The present report is submitted in compliance with paragraph 17 of General Assembly resolution 70/117. It highlights arrangements in the Secretariat related to assistance to third States affected by the application of sanctions, the operational changes that have occurred in the light of the shift in focus in the Security Council and its sanctions committees towards targeted sanctions and recent developments concerning the activities of the Assembly and the Economic and Social Council in the area of assistance to third States affected by the application of sanctions.

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I. Introduction

1. In its resolution 70/117, the General Assembly requested the Secretary-General to submit a report to the Assembly at its seventy-first session on the implementation of the provisions of the Charter of the United Nations related to assistance to third States affected by the application of sanctions. The present report has been prepared in compliance with that request.

II. Measures for further improvement of the procedures and working methods of the Security Council and its sanctions committees related to assistance to third States affected by the application of sanctions

2. As noted in previous reports of the Secretary-General (A/62/206 and Corr.1, A/63/224, A/64/225, A/65/217, A/66/213, A/67/190, A/68/226, A/69/119 and A/70/119), several of the recommendations and best practices set out in the report of the Security Council Informal Working Group on General Issues of Sanctions (S/2006/997, annex) related to improved sanctions design and monitoring; however, the report did not contain any recommendations that explicitly referred to ways to assist third States affected by the unintended impact of sanctions. By its resolution 1732 (2006), the Security Council decided that the Working Group had fulfilled its mandate as set out in the note by the President of the Council of 29 December (S/2005/841), took note with interest of the best practices and methods set out in the report of the Working Group and requested its subsidiary bodies to take note of them also.

3. During the period under review, and in keeping with the shift of the Security Council from comprehensive economic sanctions to targeted sanctions, there continued to be no assessment reports concerning the likely or actual unintended impact of sanctions on third States.

4. Concerning the sanctions regimes currently in existence, in nearly every case in which the Security Council has decided that States shall freeze the assets owned or controlled by designated individuals and entities, the Council has also adopted exceptions by which States can signal to the relevant sanctions committee their intention to authorize access to frozen funds for a variety of basic and extraordinary expenses.[1] Such expenses can include tax payments, insurance premiums and public utility charges; reasonable professional fees and reimbursement of expenses associated with the provision of legal services; and fees or service charges, in accordance with national laws, for routine holding or maintenance of frozen funds, other financial assets and economic resources.

5. Furthermore, in recent years, whenever the Council has imposed an assets freeze it has also consistently provided that the measure would not prevent a designated person or entity from making payments due under a contract entered into prior to the listing of such a person or entity, provided that certain conditions had been met, and after notification by the relevant States to the relevant sanctions

[1] See Security Council resolutions 1452 (2002) (as amended by resolution 1735 (2006)), 1591 (2005), 1596 (2005), 1636 (2005), 1718 (2006), 1844 (2008), 1907 (2009), 1970 (2011) (as updated by resolution 2009 (2011)), 2134 (2014), 2140 (2014) and 2206 (2015).

committee of the intention to make or receive such payments or to authorize, where appropriate, the unfreezing of funds, other financial assets or economic resources for that purpose, 10 working days prior to such authorization.[2]

6. As noted in previous reports of the Secretary-General,[3] the Chair of the Committee established pursuant to resolution 1970 (2011) has informed the Council in periodic reports of a total of 46 notifications received.[4]

7. In addition, also in connection with the assets freeze measure, in certain cases the Security Council has aimed to ensure that persons or entities, including in third States, are not held responsible for failure to comply with a contractual or other obligation when such failure is due to measures imposed by the Council in its resolutions.[5]

8. Since 2014, sanctions committees have increasingly organized meetings with regional States in order to initiate or strengthen dialogue with them, including for the purpose of discussing any implementation challenges they might be facing. Six committees have held 13 such meetings.[6] Open briefings by the chairs of the committees, of which there have been seven since 2014, also provide a forum to hear from Member States about their concerns and challenges.[7]

9. In 2015, one Committee received a letter from a Member State explicitly invoking Article 50 of the Charter and seeking the Committee's assistance in defraying the costs associated with the implementation of a specific aspect of the relevant sanctions regime. While the issue was under the Committee's consideration, the Member State subsequently advised, in April 2016, that it had acted in accordance with its national rules and domestic procedures and had thereby addressed the matter. As a result, no further Committee action was needed.

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[2] See, for example, paragraph 21 of resolution 1970 (2011), paragraph 34 of resolution 2134 (2014), paragraph 14 of resolution 2140 (2014), paragraph 10 of resolution 2196 (2015) and paragraph 15 of resolution 2206 (2015).

[3] See A/62/206 and Corr.1, A/63/224, A/64/225, A/65/217, A/66/213, A/67/190, A/68/226, A/69/119 and A/70/119.

[4] See S/PV.6566, S/PV.6622, S/PV.6698, S/PV.6857, S/PV.6934, S/PV.6981, S/PV.7031, S/PV.7075, S/PV.7130, S/PV.7194, S/PV.7398, S/PV.7485, S/PV.7577, S/PV.7640 and S/PV.7706. The periodic report of 8 November 2012 was not delivered in its entirety at the public meeting; the full text is available, however, from the Committee's website: www.un.org/sc/committees/1970/pdf/chairman-november2012.pdf.

[5] See paragraph 27 of resolution 1973 (2011), paragraph 13 of resolution 2087 (2013), and paragraph 18 of resolution 2182 (2014).

[6] The Committee established pursuant to resolution 1533 (2004) concerning the Democratic Republic of the Congo (two meetings), the Committee established pursuant to resolution 1591 (2005) concerning the Sudan (three meetings), the Committee established pursuant to resolution 1970 (2011) concerning Libya, the Committee established pursuant to resolution 2127 (2013) concerning the Central African Republic (three meetings), the Committee established pursuant to resolution 2140 (2014) (two meetings) and the Committee established pursuant to resolution 2206 (2015) concerning South Sudan (two meetings).

[7] Held by the Chairs of the Committee established pursuant to resolutions 1267 (1999), 1989 (2011) and 2253 (2015) concerning Islamic State in Iraq and the Levant (Da'esh), Al-Qaida and associated individuals, groups, undertakings and entities (two briefings), the Committee established pursuant to resolution 1718 (2006) concerning the Democratic People's Republic of Korea (two briefings), the Committee established pursuant to resolution 2127 (2013) concerning the Central African Republic (two briefings) and the Committee established pursuant to resolution 2140 (2014).

III. Recent developments related to the role of the General Assembly and the Economic and Social Council in the area of assistance to third States affected by the application of sanctions

10. In its resolution 59/45, the General Assembly reaffirmed the important roles of the Assembly and the Economic and Social Council in the area of assistance to third States confronted with special economic problems arising from the carrying out of preventive or enforcement measures imposed by the Security Council. Should consultations be requested by those States, the Assembly and the Economic and Social Council will mobilize and monitor, as appropriate, the economic assistance efforts of the international community and the United Nations system on behalf of third States affected by sanctions.

A. General Assembly

11. The Special Committee on the Charter of the United Nations and on the Strengthening of the Role of the Organization met from 16 to 24 February 2016. The report of the Special Committee contains a summary of the discussions on the question of the implementation of the Charter provisions relating to assistance to third States affected by sanctions (see A/71/33, chap. II (A)).

B. Economic and Social Council

12. The Economic and Social Council approved its programme of work (see E/2016/1) and decided to include in the agenda of the coordination and management meeting a sub-item, 18 (k), entitled "Assistance to third States affected by the application of sanctions". No advance documentation was requested. The Council considered the matter on 1 June 2016 but took no action under that sub-item.

IV. Arrangements in the Secretariat related to assistance to third States affected by the application of sanctions

13. In accordance with the relevant resolutions of the General Assembly,[8] the competent units within the Secretariat have maintained their capacity to monitor information pertaining to any special economic problems in third States arising from the application of preventive or enforcement measures imposed by the Security Council, to evaluate any appeals to the Security Council made by such affected third States under the provisions of Article 50 of the Charter of the United Nations and to identify solutions to the special economic problems of those States.

14. As noted in previous reports,[9] sanctions imposed by the Security Council that are currently in effect are all targeted in nature and the shift from comprehensive to targeted sanctions has led to significant reductions in unintended adverse impacts on

[8] See resolutions 50/51, 51/208, 52/162, 53/107, 54/107, 55/157, 56/87, 57/25, 58/80, 59/45, 60/23, 61/38, 62/69, 63/127, 64/115, 65/31, 66/101, 67/96, 68/115, 69/122 and 70/117.

[9] See footnote 4, above.

third States. Therefore, the need to explore practical and effective measures of assistance to third States affected by sanctions has been reduced considerably. In fact, no official appeals by third States to monitor or evaluate unintended adverse impacts on non-targeted countries have been conveyed to the Department of Economic and Social Affairs of the Secretariat since 2003.

15. To assess the impacts of sanctions on third States, detailed case-by-case assessments of the possible adverse impact on individual countries, including both targeted and non-targeted countries, would be required. The impact of sanctions would need to be evaluated against a baseline drawn from recent historical trends in economic and social conditions in the countries or region. The report of the Informal Working Group on General Issues of Sanctions, the Sanctions Assessment Handbook and the Field Guidelines for Assessing the Humanitarian Implications of Sanctions published by the Inter-Agency Standing Committee include some of the technical methods that can be used to review and assess special economic problems of third States affected by targeted sanctions.

16. The Department of Economic and Social Affairs has continued to explore remedial assistance to affected third States. The main findings and suggestions on this issue are available in the report of the Secretary-General (A/53/312) and in background papers prepared for the ad hoc expert group meeting which was convened by the Department in 1998. It is difficult to update the information on assistance measures in general, as the nature of targeted sanctions and their likely impact, particularly the unintended economic consequences for third States, will vary from country to country.

17. According to the present Secretariat arrangement, the Department of Political Affairs, in consultation with the Department of Economic and Social Affairs, and at the request of the Security Council and its organs, is to assess the effects of sanctions regimes on third States and provide advice to the Security Council and its organs on the specific needs or problems of those third States (see A/57/165, para. 9). As mentioned above, however, there have been no requests by the Security Council or its organs for the Department of Economic and Social Affairs to monitor or evaluate specific cases of third States affected by sanctions.

18. The Compendium of the High-Level Review of United Nations Sanctions[10] includes recommendations for the Security Council to conduct periodic assessments of the impact of its measures and to commission pre-assessments of the humanitarian and socioeconomic effects when contemplating the imposition of broad sectoral or financial sanctions. The Department of Economic and Social Affairs will continue to seek opportunities for collaborative work with other relevant parts of the Secretariat, international organizations and academic institutions, with a view to keeping abreast of similar and related methodologies and to improving the sanctions monitoring framework and sanction assessment methodology. A change in the present Secretariat arrangement, however, would require revised legislative authorization and adequate budgetary resources.

[10] A/69/941-S/2015/432, annex.